

ISSUE DATE: February 3, 1999

DOCKET NO. P-466/C-98-1134

ORDER FINDING OFFERINGS AUTHORIZED AS SPECIAL PROMOTIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of the Department of Public
Service's Investigation Into Tariffs of
Sprint Communications Company, L.P.

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PROCEDURAL HISTORY

On July 30, 1998, the Minnesota Department of Public Service (the Department) reported to the Commission that in a recent review of the tariff of Sprint Communications Company, L.P. (Sprint), it discovered two promotional services with special intraLATA rates that it believed resulted in geographically deaveraged rates in violation of Minn. Stat. § 237.74. The Department recommended that the Commission direct Sprint to either eliminate the geographic deaveraging contained in its tariff or show cause why it should not be required to do so.

On August 10, 1998, Sprint filed reply comments. Sprint stated that the promotions in question offered promotional rates for intraLATA calls when customers enter into new plans with one, two and three-year terms. The first promotion was effective during the month of September 1997 and the second promotion was effective from mid-October of 1997 through the first quarter of 1998. The intraLATA rates were different for the two promotions. Sprint argued that Minn. Stat. § 237.74, subd. 2 allows the use of geographic deaveraging in promotions as a specific exception to the general prohibition against geographic deaveraging.

On August 24, 1998, the Department filed reply comments asserting that it believes that Minn. Stat. § 237.74, subd. 2 prohibits all forms of geographic deaveraging and asserted that Sprint has not provided an adequate basis to support deviating from the legislative intent and plain language of Minn. Stat. § 237.74, subd. 2.

On September 3, 1998, Sprint filed additional comments. Sprint objected to what it viewed as the Department's narrow reading that Minn. Stat. § 237.74, subd. 2 authorizes only promotions involving location pricing. Sprint argued that the Department's interpretation was not supported by the statute's language and did not further the policy goal identified by the Department for the prohibition against geographic deaveraging.

On October 29, 1998, the Department filed its final written comments.

The Commission met on December 22, 1998 to consider this matter.

FINDINGS AND CONCLUSIONS

I. SPRINT DEFENDS ITS CHALLENGED OFFERINGS, CLAIMING EXCEPTION

Sprint stated that its challenged offerings were promotions as that term is used in Minn. Stat. § 237.74, subd. 2 and that, as such, they were authorized as exceptions to the statute's general prohibition against geographic deaveraging. Sprint stated that but for the exception provision in subd. 2, its offerings would be prohibited. The Department denied that the exception cited by Sprint applied to Sprint's offerings.

Both Sprint and the Department argued that the plain language of Minn. Stat. § 237.74, subd. 2 supported their positions. Subdivision 2 states:

The rates of a telecommunications carrier must be the same in all geographic locations of the state unless for good cause the commission approves different rates. A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and all geographic areas in the state where it offers the services. **However, a carrier may offer** or provide volume or term discounts or may offer or provide **unique pricing to certain customers** or to certain geographic locations **for special promotions**, and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate. (Emphasis added.)

In short, Minn. Stat. § 237.74, subd. 2 permits geographically deaveraged rates as part of a **promotional offering** as a specific exception to the general prohibition against geographic deaveraging of rates.

II. THE DEPARTMENT DISPUTES SPRINT'S CLAIM OF EXCEPTION

The Department argued that the exception created by the statute applies only to promotions that offer "location pricing," i.e. unique rates to customers located in certain locations, not to promotions offering "route pricing," i.e. lower prices based on the route of the call. The promotions at issue here, the Department notes, are "route pricing" promotions. Under these promotions, callers making calls of the same distance receive one (lower) price for an intraLATA call and another (higher) price for the same distance call that ends in another LATA. As such, the Department concluded, the promotions in question fail to fit into the exception to the general prohibition against geographic deaveraging and must be rejected.

III. COMMISSION ANALYSIS

For the reasons set forth below, the Commission believes that Sprint's offerings (which provide

terminus-based price differentials for calls of equal length) are not prohibited by Minn. Stat. § 237.74, subd. 2 because they are "special promotions" as that term appears in Minn. Stat. § 237.74, subd. 2.

First, this is a case of the first impression for the Commission. Previous Orders cited by the Department involving geographic deaveraging do not address promotional offerings and are, therefore, not controlling. See In the Matter of the Department of Public Service Investigation Into Tariffs of Sprint Communications, Docket No. P-466/C-97-1550, ORDER REQUIRING REVISIONS TO TARIFFS (February 5, 1998) and In the Matter of an Investigation into AT&T's Commercial Long Distance Service and Message Telecommunications Service Rate Structures, Docket No. P-442/TC-95-419, ORDER REJECTING DIFFERENTIAL BETWEEN BASIC BUSINESS AND BASIC RESIDENTIAL RATES (October 14, 1996).

Second, the Department failed to explain why the legislature would specifically refer to promotions offered to "certain customers" in addition to "geographic locations" if it only intended to authorize location-based promotions. The Commission concludes that both location- and route-based geographic deaveraging are permissible in properly constructed promotional offerings.

Third, if the legislature intended the promotion exception to apply only to the uniform location pricing requirement, it could have clearly indicated that. Instead, it placed the exception language in a separate sentence following not only the uniform location pricing requirement but the uniform-rates-on-all-routes requirement, thereby indicating that the exception was available with respect to both requirements.

Fourth, the public policy reason for prohibiting geographic deaveraging (defense of the rural customers) is not implicated by either of these two promotions. In fact, the Commission notes that the promotions at issue here actually benefit rural customers who subscribe to them by reducing short-haul rates, long a concern of this Commission.

- The first promotion was offered state-wide. All rural customers were eligible to receive the benefit of Sprint's promotional lower IntraLATA rates with no negative repercussion to their interLATA rates. Consequently, rural customers were clearly not prejudiced due to their location. If, due to a customer's predominantly interLATA usage, the promotion was not very attractive, at least it did no harm to the customer since the promotion did not increase the customer's interLATA rates.
- Although the second promotion was offered just to customers in only three of the five LATAs, there are many rural customers in these LATAs who could have benefitted from lower short-haul rates. Moreover, customers in LATAs where the promotion was not offered did not experience an increase in their rates or other diminution on their status quo services. In short, allowing Sprint to offer special promotional rates to customers in some but not all of the cannot be viewed as hurting customers in rural areas.

Fifth, the promotional rates do not discriminate between calls on the basis of whether they

originate or terminate in an urban area or involve two rural locations. Ensuring equitable rates for calls between rural exchanges was a major policy goal of the prohibition against geographic deaveraging.

Sixth, permitting such offerings as “special promotions” will not lead inexorably, as the Department warned, to telecommunications carriers charging geographically deaveraged rates for virtually all of their temporary **and** permanent service offerings by simply labeling the services as “special promotions.” True, the duration and frequency of “special promotions” are not specified in the statute. This does not mean, however, that the Commission cannot monitor carriers’ promotional practices and prevent them from functioning as pretexts for geographic deaveraging rates.

Finally, the Commission is reluctant over a year after the first of the promotional rates went into effect, to disrupt established service arrangements and customer expectations. The most likely consequence of adopting the Department’s recommendation would be an increase in intraLATA rates for those who took advantage of the special promotion. Not only would this do nothing to vindicate the policy goals of the geographic deaveraging statute; it would undermine those goals as to rural customers enjoying lower short-haul rates as a result of the promotion.¹

IV. COMMISSION ACTION

For all these reasons, given the unique facts of this case, the Commission will reject the Department’s recommendation and permit Sprint to continue charging the promotional rates at issue.

ORDER

1. The Commission hereby finds that Sprint’s Promotional Offerings services listed on Tariff Pages 129.16 and 129.17 are authorized as special promotions pursuant to Minn. Stat. § 237.74, Subd. 2. The Commission, therefore, declines to take any remedial actions recommended by the Department with respect to those offerings.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

¹ Another method of equalizing intraLATA and interLATA rates proposed by the Department was for the Commission to require Sprint to reduce its interLATA rates to intraLATA promotional levels. This recommendation is problematic in light of the Commission’s extremely limited jurisdiction over rates under Minn. Stat. § 237.74, subd. 4.

Burl W. Haar
Executive Secretary

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